

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RAYMOND G. PENNINGTON,	)	
	)	
Plaintiff,	)	Civil Action No. 06-1706
	)	
v.	)	Judge Terrence F. McVerry
	)	Magistrate Judge Lisa Pupo Lenihan
THE HOME DEPOT USA, INC.,	)	
	)	Doc. No. 21
Defendant.	)	
	)	

**MEMORANDUM ORDER**

Plaintiff's complaint was filed by the Clerk of Court on December 28, 2006, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The Magistrate Judge's Report and Recommendation (Doc. No. 28), filed on February 26, 2008, recommended that the Defendant's Motion to Dismiss (Doc. No. 21), which the Magistrate Judge converted to a Motion for Summary Judgment, be denied. Service was made on all counsel of record. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrate Judges, that they had ten (10) days to file any objections. No objections have been filed.

After review of the pleadings, briefs, and other documents in the case, together with the Report and Recommendation, the following order is entered:

**AND NOW**, this 19<sup>th</sup> day of March, 2008,

**IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss (Doc. No. 21), which was converted to a Motion for Summary Judgment, is **DENIED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that the Report and Recommendation (Doc. No. 28) of Magistrate Judge Lenihan, dated February 26, 2008, is adopted as the opinion of the Court.

BY THE COURT:

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s/ Terrence F. McVerry  
United States District Judge

cc: Lisa Pupo Lenihan  
U.S. Magistrate Judge

All Counsel of Record  
*Via Electronic Mail*